

COURT FILING

**LAVIN, COLEMAN, O'NEIL, RICCI, FINARELLI & GRAY**

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PENN MUTUAL TOWER  
PHILADELPHIA, PENNSYLVANIA 19106  
(215) 627-0303

☐ City Hall Date June 28, 2002

☒ District Court U.S. Clerk of Eastern District Court Attorney SEM

☐ Other \_\_\_\_\_ Return To SEM-Alice Casey

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Case Name NATIONAL RAILROAD PASSENGER CORPORATION, t/a AMTRAK v. ASPLUNDH TREE EXPERT CO.

Court Term & Number Civil Action, No. 02-3034

Document Defendant's Answer With Affirmative Defenses of Defendant, Asplundh Tree Expert Co. to Plaintiff's Complaint.

Instructions File original and return time stamped copy

File No. 0550-11671 Check No. \_\_\_\_\_

Filed \_\_\_\_\_ Amount \_\_\_\_\_

If unable to complete, call aca Ext. 7621

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NATIONAL RAILROAD PASSENGER	:	CIVIL ACTION
CORPORATION, t/a AMTRAK	:	
Plaintiff	:	
	:	
v.	:	
	:	NO. 02-3034
	:	
ASPLUNDH TREE EXPERT COMPANY	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

**ANSWER WITH AFFIRMATIVE DEFENSES OF DEFENDANT,  
ASPLUNDH TREE EXPERT CO. (INCORRECTLY IDENTIFIED AS  
ASPLUNDH TREE EXPERT COMPANY) (ASPLUNDH) TO PLAINTIFF'S COMPLAINT**

1. Denied. Answering defendant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in this paragraph of the Complaint, hence, they are deemed denied with strict proof demanded thereof at the time of trial.

2. Admitted.

3. Denied. Answering defendant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in this paragraph of the Complaint, hence, they are deemed denied with strict proof demanded thereof at the time of trial.

4. Denied. Answering defendant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in this paragraph of the Complaint, hence, they are deemed denied with strict proof demanded thereof at the time of trial.

5. Denied.

6. Denied. Answering defendant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in this paragraph of the Complaint, hence, they are deemed denied with strict proof demanded thereof at the time of trial.

7. Denied as stated. It is generally admitted on or about June 7, 2001, Asplundh was performing work on utility poles owned by Baltimore Gas and Electric, a municipal power company, in Glendale, Maryland. To the extent plaintiff has raised additional factual averments, answering defendant is without knowledge or information sufficient to form a belief as to the truth of those averments, hence, they are deemed denied, with strict proof demanded thereof at time of trial.

8. Denied. By way of further response, it is specifically denied Asplundh caused a power line to fall across the catenary electrical supply lines of the plaintiff. Asplundh also specifically denies it was negligent or trespassed upon the property of the plaintiff at any time.

9. Denied. To the extent plaintiff has raised factual averments, answering defendant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in this paragraph of the Complaint, hence, they are deemed denied with strict proof demanded thereof at the time of trial.

10. Denied. Answering defendant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in this paragraph of the Complaint, hence, they are deemed denied with strict proof demanded thereof at the time of trial.

11. Denied. To the extent plaintiff has raised factual averments, answering defendant is without knowledge or information sufficient to form a belief as to the truth of the averments raised in this paragraph of the Complaint, hence, they are deemed denied with strict proof demanded thereof at the time of trial.

WHEREFORE, defendant, Asplundh, demands judgment in its favor together with costs and attorney's fees.

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted against answering defendant.

**SECOND DEFENSE**

The incident described in plaintiff's Complaint may have been caused or contributed to by the negligence of the plaintiff.

**THIRD DEFENSE**

Plaintiff may have assumed the risk of its activities.

**FOURTH DEFENSE**

The negligent acts or omissions of other individuals and/or entities may have constituted an intervening, superseding cause of the injuries and/or damages alleged to have been sustained by the plaintiff.

**FIFTH DEFENSE**

The damages alleged to have been sustained by the plaintiff were not proximately caused by the answering defendant.

**SIXTH DEFENSE**

Plaintiff's cause of action may be barred in whole or in part by the applicable statute of limitation.

**SEVENTH DEFENSE**

The accident complained of in plaintiff's Complaint may have been caused or contributed to by others over whom answering defendant had no control and for whom it is not responsible.

**EIGHTH DEFENSE**

The accident complained of in plaintiff's Complaint may have been caused or contributed to by conditions over which the answering defendant had no control and for which it is not responsible.

**NINTH DEFENSE**

Plaintiff's cause of action may be barred in whole or in part by the applicable Statute of Repose.

**TENTH DEFENSE**

Answering defendant hereby reserves the right upon completion of its investigation and discovery to file such additional defenses, affirmative defenses, counterclaims and/or third-party complaints as may be appropriate pursuant to the applicable rules and law.

WHEREFORE, defendant, Asplundh, demands judgment in its favor together with costs and attorney's fees.

**LAVIN, COLEMAN, O'NEIL, RICCI, FINARELLI & GRAY**

Date:

By: \_\_\_\_\_

Basil A. DiSipio, Esquire  
Stephen E. Moore, Esquire  
Attorneys for Defendant,  
Asplundh Tree Expert Co.

IN THE EASTERN DISTRICT OF PENNSYLVANIA  
UNITED STATES DISTRICT COURT

NATIONAL RAILROAD PASSENGER  
CORPORATION, t/a AMTRAK

Plaintiff

v.

ASPLUNDH TREE EXPERT COMPANY

Defendant

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CIVIL ACTION

NO. 02-3034

**JURY TRIAL DEMANDED**

**CERTIFICATE OF SERVICE**

AND NOW COMES, Stephen E. Moore, Esquire, Counsel for Asplundh Tree Expert Co.  
hereby certifies that a copy of the Answer With Affirmative Defenses of Defendant to Plaintiff's  
Complaint was served on the person identified below by First Class Mail on June 28, 2002..

Richard K. Hohn, Esquire  
Hohn & Scheuerle  
Eleven Penn Center  
1835 Market Street  
Suite 2901  
Philadelphia, PA 19103

Respectfully submitted,  
**LAVIN, COLEMAN, O'NEIL, RICCI  
FINARELLI & GRAY**

By: \_\_\_\_\_  
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Philadelphia, PA 19106  
Telephone: (215) 351-7545  
Attorney for Defendant,  
Asplundh Tree Expert Co.